1956

IN THE

SUPREME COURT OF THE UNITED STATES

No. ~~89~~ 68

DELVAILLE H. THEARD,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION OF DELVAILLE H. THEARD FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

DELVAILLE H. THEARD,
Pro Se.

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PETITION OF DELVAILLE H. THEARD FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on January 6, 1956.

CITATION TO OPINION BELOW.

The opinion of the Circuit Court of Appeals is reported in 228 F. (2d) 617, and will be found in Advance Sheets of February 27, 1956, at page 617, and is printed in Appendix "A" hereto, *infra*, p. 21.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on January 6, 1956. Rehearing was denied on January 31, 1956. The jurisdiction of this Court is now invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

The Motion of the complainant U. S. Attorney for defendant's disbarment in the federal courts, was based exclusively on the opinion of the Louisiana Supreme Court in *Louisiana State Bar Association v. Theard*, 225 La. 98; 72 So. (2d) 310.

The Federal Court of Appeals, which, beyond said decision of the State Court, had no other alleged complaint or cause of disbarment before it, held, without however expressing its views on any of the questions passed upon by the State Court, that "the legal contentions which he (the defendant) urges upon us are not persuasive". This necessarily involves an evaluation and consideration of the reasons (we submit, mistaken, unsound and unconstitutional) advanced by the State Court and necessarily concurred in by the Circuit Court of Appeals, for the disbarment of defendant:

While the privilege of being received as a member of the legal profession is not a matter of right but depends on the judgment and discretion of the licensing authorities of the State, the **license once granted constitutes property, of which under the Fourteenth Amendment the lawyer cannot be deprived for any arbitrary or insubstantial reason.**

Can a lawyer who, during a complete mental breakdown in 1934 and 1935 committed an act for which he was not legally responsible and the moral import of which he was unable to appreciate, be disbarred in 1954, when he has fully recovered physically and mentally, has again entered normally on the practice of his profession, and has appeared and acted as counsel for some years and on countless occasions in the courts, without the doing of one single act subject to the slightest criticism or reproach?

The right to exercise any calling permitted by law, although perhaps intangible, unquestionably constitutes property, and can only be taken away and denied constitutionally on account of sound and valid justification. Implicit in the grant of discretion to a licensing authority is the qualification that it must not exercise its supervisory powers on arbitrary, whimsical or irrational considerations.

In the present case, **the disbarment** of petitioner, as clearly appears from the decision of the Supreme Court, **was based exclusively on the ground of illness eighteen years previous. The decision, expressly excluding all consideration of personal fault, and indiscriminately classifying innocent with knowing activity, was clearly not based on any ground sufficient or authorized by law, and is lacking in due process.**

Especially in a jurisdiction where, as in Louisiana, the power to disbar is not inherent in the Courts but is strictly statutory and can be grounded only on misconduct,

there must be justification, reasonable and sufficient, for disbarment.

Louisiana State Bar Association v. Connolly, 201 La. 342, at pages 353, 354, 362, 378, 9 So. (2d) 582, at pages 585, 586, 588, 593;

Constitution of Louisiana, Art. 7, Sec. 10;

Article 13, Section 4, of the Articles of Incorporation of the Louisiana State Bar Association, Vol. 21 West Edition, *Louisiana Revised Statutes*, pages 377 and 380.

Further, a petition for disbarment, instituted nearly eighteen years after notorious and wide-spread publicity of the act or acts complained of, lacks due process. *People v. Allison*, 38 Ill. 151; *People v. Coleman*, 210 Ill. 79, 71 N. E. 693; *In the Matter of the Disbarment of C. E. Elliott*, 73 Kansas 151, 84 Pac. 750; *In re Adriaans*, 28 App. D. C. 515; *People v. Tanquery*, 48 Colo. 122, 109 Pac. 260.

STATUTES INVOLVED.

Louisiana Constitution, Art. 7, Sec. 10, Par. 1;

Rules of the Louisiana Supreme Court, Rule 17 (being Article 13 of the Articles of Incorporation of the Louisiana State Bar Association, reproduced in *Louisiana Revised Statutes*, Vol 21, page 377; and particularly Section 4 of said Article 13, at page 380, Vol. 21, *Revised Statutes*, West Publishing Co. Edition).

STATEMENT OF THE CASE.

After some twenty-six years of the due and honorable practice of law, including sixteen years as part-time professor of Civil law in the Tulane Law School at New Orleans*, petitioner about the year 1934 or 1935 suffered a serious mental breakdown resulting from overwork, and which necessitated in 1936 his civil interdiction—appointment of guardian or "committee"—and his removal to a mental hospital where he remained under treatment constantly until 1943, being then moved to the Louisiana State Asylum for the Insane, from which he was released as cured and without psychosis, in 1944.

In 1948, his civil interdiction having been judicially removed—the Court holding that he was completely re-

*The work of petitioner as a part-time professor of civil law (descent and distribution, wills, administration) in the Tulane Law School for sixteen years (from 1919 to 1935) was a valuable contribution rendered by him to his chosen profession, without one cent of pecuniary return. When petitioner's increasingly nervous condition necessitated his resignation in 1935, the measure of his contribution to Tulane and legal education was expressed in a Resolution of the Law Faculty signed by Hon. Rufus Carrollton Harris, then Dean of the Tulane College of Law and since 1937 President of Tulane, in part as follows: "It is with sincere regret . . . that the Faculty tenders this expression of its acknowledgment and deep appreciation of the high quality of the service rendered by Mr. Theard to the institution during the many years of his close connection with it and its affairs, a service characterized at all times by technical and class-room ability of a high order, by a spirit of intense loyalty to the School, and by a disposition which endeared him to students and colleagues alike . . . " And Hon. Paul Brosman, then Assistant Dean of the College of Law (subsequently and until his recent death a Judge of the Military Court of the United States) wrote the petitioner at the time of his resignation: "Never have I known a more loyal and able body of part-time teachers than is found in our practitioner colleagues at Tulane, and among them no one has evidenced more interest in, and devotion to, the School and the cause of modern legal education than yourself . . .".

stored to health and able to manage his own affairs—petitioner, **who had and has never been convicted of any crime,** and whose demeanor in every court has never been subject to the slightest criticism, resumed the practice of law and, since that time and up to the refusal of the rehearing in the disbarment suit on April 26, 1954, was very active in the *nisi prius* and appellate courts—having argued during these six years (from 1948 to 1954) not less than thirty-seven matters before the Supreme Court of Louisiana and the intermediate Court of Appeal for Orleans Parish. See list of these cases, attached to the present petition as Appendix "C", *infra*, pp. 24-26.

In June, 1952, the Louisiana State Bar Association instituted a disbarment suit against petitioner in the State Supreme Court. Complainant admittedly found no fault with defendant's current professional conduct and activities since his resumption of practice in 1948, but based its complaint exclusively on **an act of petitioner committed during his period of insanity approximately eighteen years previous to the institution of the complaint.**

It is must be noted that the State Court, in passing on another act of petitioner of approximately the same date, had already decided that the charge against **petitioner in that matter must be disposed of with regard to his known mental status at that time;** and, accordingly with reference to the act complained of in that case, the Supreme Court **held that it "occurred by reason of an unfortunate circumstance over which (the defendant) had no control", and not "through some intentional and deliberate act on his part."** *State v. Theard*, 212 La. 1022, at p. 1031, 34 So. (2d) 248, at p. 251.

This holding, fully recognizing and adjudging the deficient mental condition, serious illness and lack of responsibility of defendant at and about the times mentioned, is particularly apt in view of the fact that, despite its said finding, the State Court saw fit to inflict disbarment upon petitioner (225 La. 98, 72 So. (2d) 310) for an act which, as previously specifically characterized by the same Court (212 La. 1022, 34 So. (2d) 248), must be held to have "occurred by reason of an unfortunate circumstance (defendant's insanity) over which he had no control", and "not through some intentional and deliberate act on his part."

And the State Court went even further, for in the disbarment decision (although in Louisiana disbarment is strictly statutory and can be considered only on account of an attorney's willful misconduct) the Supreme Court declined to consider any claim of willful misconduct by the defendant as actually charged by the prosecuting Bar Committee (225 La. 98, at page 113, 72 So. 310, at page 315), but declared:

> *"In our opinion it matters not whether the . . . conduct stems from an incapacity to discern between right and wrong, or was engendered by a specific criminal intent."* (Italics by the Court.) 225 La. 98, at page 107; 72 So. (2d) 310, at page 313).

In other words, defendant was disbarred strictly and only because he had suffered, many years previously, (and despite complete recovery) from the illness of mental derangement.

The Court thus refused to consider any charge of willful misconduct as pressed by the prosecuting Bar As-

sociation, but, limiting itself to defendant's conceded insanity at the time of the act complained of, decided that defendant should be disbarred even if he was ill and irresponsible when the act was committed. (The Circuit Court of Appeals must have concurred in this ruling, since it held below that the attack herein on that type of ruling in a disbarment action, is "not persuasive").

Petitioner applied for certiorari directed to the Supreme Court of Louisiana but this was refused. *Theard v. Louisiana State Bar Association*, 348 U. S. 832, 99 L. Ed. 656, 75 Sup. Crt. 54.

In May, 1954, the United States Attorney for the Eastern District of Louisiana, **basing himself exclusively on the decree of the Louisiana Supreme Court,** moved for defendant's disbarment.

Defendant's answer set forth his defense: " . . . the opinion and decree of the Louisiana Supreme Court does not present . . . any appropriate or just basis for his disbarment . . . Appearer was disbarred without just cause or reason and by a decree depriving him of his property without due process of law . . . as clearly appears from a mere reading of the opinion, the Louisiana Court based its decree of disbarment on an act committed while appearer was the victim of a mental breakdown, utterly bereft of reason, and unable to distinguish between right and wrong."

The District Judge, after a hearing, without written reasons and from the Bench ordered that the Rule be made absolute, and that defendant's name be stricken from the roll of attorneys.

On Theard's appeal to the Circuit Court of Appeals for the Fifth Circuit, the Court did not discuss the State Court decision on the numerous points presented in the answer and elaborated in defendant's brief in that Court, but, affirming the District Judge, declared merely: "the legal contentions which he" (the defendant) "urges upon us are not persuasive." 228 F. (2d) 617 (Advance Sheets, February 27, 1956.)

REASONS FOR GRANTING THE WRIT.

A license to practice one of the learned professions constitutes property, and to deprive a lawyer of that property for an alleged reason insubstantial, arbitrary, and unknown in law, violates substantive due process.

Our contention that **the right to practice law is property entitled to protection under substantive due process,** was attempted to be answered by the State Court (225 La. 98, 112, 72 So. (2d) 310, 315) with the quotation of a statement from Corpus Juris Secundum, Volume 7, *verbis* "Attorney and Client", Sect. 4(b), that the right to practice law is a privilege to be earned by hard study, and that **it is not property, and that the lawyer's right to due process exists only to the extent of procedural due process,** *i. e.*, that he should have opportunity for defense when anyone tries to disbar or suspend him from practice.

The Court added that this was its appreciation of the decisions in *Ex Parte Garland*, 4 Wall. 333, 18 L. Ed. 366, and *Ex Parte Robinson*, 19 Wall. 505, 22 L. Ed. 205.

It is to be assumed that the Court of Appeals agrees with this very mistaken and erroneous appreciation of the

law, since the only observation it found it appropriate to make in its decision with reference to defendant's opposition, was all-inclusive and in one phrase: ". . . the legal contentions which he (defendant) urges upon us are not persuasive."

The Supreme Court of Louisiana and the Court of Appeals are indeed very much mistaken in their appreciation of the *Garland and Robinson* cases.

Ex Parte Garland, 4 Wall. (U. S.) 333, at page 378, 18 L. Ed. 366, at page 370, definitely holds that, **when once bestowed, the right to practice law is property and cannot be taken away without substantive due process;** and it follows that **illness twenty years ago cannot be sufficient ground for disbarment,** when the lawyer has now fully and completely recovered and has demonstrated his recovery by great activity in the appellate tribunals of Louisiana and by even greater activity at *nisi prius*,—all this for nearly ten years without a single criticism or complaint from anyone.

The Supreme Court, in *Ex Parte Garland*, 4 Wall. 333, at page 379; 18 L. Ed. 366, at page 370, said:

> "The attorney and counsellor being, by the solemn judicial act of the Court clothed with his office, *does not hold it as a matter of grace and favor.* The right which it confers upon him to appear for suitors and argue causes, is *something more than a mere indulgence revocable at the pleasure of the Court or at the command of the Legislature.* It is a right of which he can only be deprived by judgment of the Court by *moral or professional delinquency.*"

Certainly, a **lawyer, stricken with a mental breakdown, cannot for that reason be characterized as a person guilty of "moral and professional delinquency."**

And in *Ex Parte Robinson*, 19 Wall. 505, at page 512, 22 L. Ed. 205, the Supreme Court in holding that summary disbarment was not the proper remedy for a lawyer's conduct allegedly contemptuous, fully affirmed *Ex Parte Garland.*

The proposition that **the right to practice one's profession is a property right which, like any other property right, cannot be taken away capriciously and without proper, relevant and adequate cause,** is fully stated in *Frank M. Dent v. The State of West Virginia*, 129 U. S. 114, at page 121, 32 L. Ed. 623, at page 625, 9 Sup. Ct. 231, at page 233:

> "It is undoubtedly the right of every citizen of the United States, to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and conditions. . . . All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or as it is sometimes termed the estate acquired in them, that is, *the right to continue their prosecution*, is often of great value to the possessors, and *cannot be arbitrarily taken from them any more than their real or personal property can thus be taken away . . .*"

In *Wieman v. Updegraff*, 344 U. S. 183, 97 L. Ed. 216, 73 Sup. Ct. 215, certain professors in the Oklahoma

Agricultural and Mechanical College were dismissed because they refused to sign a statutory loyalty oath under which they were called upon to swear that they had not within five preceding years been members of any organization officially determined as subversive by the United States Attorney General. The refusal of an official to sign was to be followed by his automatic removal from the public service. **This drastic rule operated without reference to any knowledge on the part of any official at the time, in the nature or objectives of the banned association.** In an action instituted to restrain the payment of salaries to these officials who had declined to sign the oath on the ground that it lacked due process, this Court, reversing the Oklahoma tribunals, said (344 U. S., at page 189, 97 L. Ed. 221, 73 Sup. Ct., at page 218):

> "Knowledge is not a factor under the Oklahoma statute. We are thus brought to the question . . . whether the due process clause permits a State in attempting to bar disloyal individuals from its employ, to exclude persons solely on the basis of organizational membership *regardless of their knowledge* concerning the organization to which they had belonged. For under the statute before us, the fact of membership alone disqualifies. If the rule be expressed as a presumption of disloyalty, it is a conclusive one. *But membership may be innocent. . . . There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds.* In the view of the community, the stain is a deep one, indeed it has become a badge of infamy. . . . *Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath*

offends due process. We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary and discriminatory."

There can be no doubt of the relevancy of the above decision in the present case, where petitioner is sought to be disbarred for an act committed during a period of insanity and without culpability or consciousness. **The "indiscriminate classification of the act of an insane person, whose serious illness and lack of responsibility at the time involved have already been adjudged** by the Court *(State v. Theard,* 225 La. 98, 72 So. (2d) 310), **with knowing and guilty activity justifying disbarment, "must", in the language of this Court, "fall as an assertion of arbitrary power" and "offends due process".**

In the matter of *Dr. Edward A. Barsky v. The Board of Regents of the University of the State of New York*, 347 U. S. 442, 98 L. Ed. 829, 74 Sup. Ct. 650, the petitioner, a physician, refused to testify and to produce before a Committee of Congress, certain records of an Association of which he was an officer. He was held guilty of contempt, tried in the District Court, and sentenced to a six months prison term, which he served. He was then suspended from practice for six months by the highest medical regulatory board of the State of New York. His appeal to the New York Courts failed, but his application for certiorari was granted by this Court.

The constitutional difficulty in the *Barsky* case, as discerned by three of the Justices, lay in the fact that

Barsky's suspension from the work of his chosen profession was hardly a matter which bore any reasonable relation to the activities, such as they may have been, regarding which Congress had the right to examine him and inspect the papers of his organization.

On the other hand, petitioner Theard, under his conceded insanity on which the decision of the Louisiana Supreme Court is based, has not been guilty of any wrongdoing. Since that Court conceded for the purpose of its decision that he was insane, **he has been disbarred, despite said insanity, because the Louisiana Court held that this admitted insanity offered no defense to any act committed** by him whilst he was *non compos mentis*. It will be remembered **that there can be no mistake** about this, the Louisiana Court having declared unequivocally (225 La. 98, 108, 72 So. (2d) 310, 313) in disbarring him:

> ". . . In our opinion it matters not whether the dishonest act stems from an incapacity to discern between right and wrong or was engendered by a specific criminal intent".

Petitioner has found it difficult to believe that the Circuit Court of Appeals could agree with such a doctrine, and yet, one must think that such is the case, as petitioner's earnest protest and argument in that Court are disposed of with the statement that "the legal contentions which he (the present petitioner) urges upon us are not persuasive."

Despite Dr. Barsky's admitted offense, three of the Justices of this Court had no hesitancy in condemning his suspension from his chosen field of work, **which bore**

no relation to the alleged offense before the Congressional Committee, on account of which he had been imprisoned.

Will the Justices who so strongly defended Dr. Barsky's right to practice his profession despite his wrongdoing, be less disposed to recognize the constitutional protection due to the petitioner herein who has surely demonstrated his complete restoration to health and who was disbarred for acts he unwittingly committed without criminal intent during a period of conceded mental infirmity now nearly twenty years ago?

Petitioner must conclude from what Associate Justices Black, Douglas and Frankfurter said in the *Barsky* case, (347 U. S. 442, 98 L. Ed. 829; 74 S. Ct. Rep. 650) that they are unquestionably of the opinion that there must be a relevant and substantial reason for a decree of professional suspension or disbarment, and that **to deprive a physician or a lawyer of his property right to practice his profession, without due and relevant cause, constitutes a deprivation of property without due process of law.**

Justice Black (with Justice Douglas concurring) said, 347 U. S. 459, 98 L. Ed. 843, 74 Sup. Ct. 659:

> ". . . *the right to practice is* . . . a very precious part of the liberty of an individual physician or surgeon. *It may mean more than any property. Such a right is protected from infringement by our Constitution,* which forbids any State to deprive a person of liberty or property without due process of law . . . (p. 463). The very idea that one may be compelled to hold his life or the means of living or any material right essential to the enjoyment of

life, at the mere will of another, seems intolerable in any country where freedom prevails. . . . *Such arbitrary power amounts to a denial of equal protection of the law within the meaning of the Fourteenth Amendment. . . .*"

Justice Frankfurter, 347 U. S. 470, 98 L. Ed. 849, 74 Sup. Ct. 665:

"It is one thing to recognize the freedom which the Constitution wisely leaves to the States in regulating the professions. *It is quite another thing, however, to sanction a State's deprivation or partial destruction of a man's professional life on grounds having no possible relation to fitness, intellectual or moral, to pursue his profession . . .* (p. 471). *The limitation against arbitrary action restricts the power of a State 'no matter by what organ it acts'.*"

And Justice Douglas (with Justice Black concurring) 347 U. S. 472, 98 L. Ed. 850, 74 Sup. Ct. 666, said:

"The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. . . . The great values of freedom are the opportunities afforded man to press to new horizons, to pit his strength against the forces of nature, to match skills with his fellowman. . . . *The Bill of Rights* does not say who shall be doctors or lawyers or policemen. But it *does say that certain rights are protected,* that certain things shall not be done. The Bill of Rights

prevents a person from being denied employment who . . . is wholly innocent of any unlawful purposes or activity. Citing Wieman v. Updegraff, 344 U. S. 183. . . ." (P. 474).

On the basis of these views, since the illness of petitioner was held to be unimportant by the Supreme Court (and by the Court of Appeals which must be held to have coincided in this error), and in view of defendant's disbarment for acts committed whilst he was concededly irresponsible and therefore without reason legal or valid and therefore in violation of due process, we ask this Court to refuse to recognize and follow such a doctrine so definitely criticized and condemned by three members of the Court and unquestionably at variance with the decision in *Wieman v. Updegraff*, 344 U. S. 183, 97 L. Ed. 216, 73 Sup. Ct. 215.

There was no reason and no excuse why, if they believed they should act, the representatives and committees of the Bar Association or Associations in Louisiana should wait from August 1936 until June 16, 1952, to bring their suit against Theard.

When brought finally in 1952, the disbarment suit in respect of a cause of action which it was averred had occurred on January 2, 1935, and which certainly was widely known in the summer of 1936, was prescribed.

In Louisiana, all personal actions, not subject to any prescription specially enumerated in the Civil Code, are subject to the prescription of ten years. R. C. C., Art. 3544.

Since in Louisiana, under the established jurisprudence *(In re Kenner*, 178 La. 774, 152 So. 580), disbarment is essentially a personal action to be disposed of accordingly, it seemed rather clear that, as stated in *State v. Fourchy*, 106 La. 743, 31 So. 325 this disbarment suit, in view of the then long delay of seventeen years, should have been dismissed because of the respondent's plea of prescription. If Article 3544 applies, and the Supreme Court stated in the *Fourchy* decision that it should apply, prescription should have prevailed in this case; prescription, a very direct defense, as stated by the Code (Art. 3459) "a peremptory and **perpetual bar to every species of action, real or personal,** when the creditor has been silent for a certain time without urging his claim".

In not any of the cases that we have been able to find, did the delay in instituting proceedings for disbarment and which the Court disapproved of, even approximate the seventeen (now nearly twenty) years which elapsed in the present case.

Disbarments were refused because of the lapse of time and delay in instituting proceedings, in the following cases:

People v. Coleman, 210 Ill. 79 (thirteen years);
Matter of the Disbarment of C. E. Elliott, 73 *Kansas* 151, 84 Pac. 750 (fourteen years);
People v. Allison, 38 Ill. 151 (seven years).
People v. Tanqueray, 48 Colo. 122, 109 Pac. 260 (eight and a half years);
In re Sherin, 27 S. D. 232, 130 N. W. 761 (several years).

In the case of *In re Adriaans*, 28 App. D. C. 515, the defendant appealed from an order of the Supreme Court of the District of Columbia decreeing his disbarment. The order of disbarment was founded on an offense committed twelve years before. In reversing, the Court of Appeal said:

> "We appreciate the solicitude of the Court concerning the reputation of members of the bar, and should not hinder them in purging the roll of attorneys. The disbarment of Adriaans for misconduct which happened *about twelve years before* is most unusual. The majority of the justices of the Supreme Court who concurred in the order of disbarment appear to appreciate this, for they say under ordinary circumstances the lapse of time would cause the court to seriously consider the long delay in filing the charges . . . The career of an unworthy member of the bar is apt to reveal misconduct more recent than in this case, where the proof is legally insufficient to disbar this respondent on account of an offense alleged to have been committed twelve years ago. The order must be reversed, and it is so ordered".

PREVIOUS APPLICATION FOR CERTIORARI.

The fact that application for certiorari to the Supreme Court of Louisiana was denied (without reasons) October 14, 1954 (Theard v. Louisiana State Bar Association, 348 U. S. 832, 75 Sup. Ct. 54, 99 L. Ed. 656), does not constitute a precedent in respect of the present application for certiorari to the United States Court of Appeals in the present case. *Robertson & Kirkham*, "Juris-

diction of the Supreme Court of the United States (1951), Section 316, pages 603, 604, 605, 610.

CONCLUSION.

It is universally conceded that disbarment is not by way of punishment but is motivated for the protection of the public and to maintain a proper level of professional standards and responsibility. The defendant, undoubtedly subject to insanity and not responsible for his act in 1935, as found and reported by the Master appointed by the Louisiana Supreme Court to hear the testimony in the State disbarment suit, and as adjudged by the Supreme Court itself *(State v. Theard,* 212 La. 1022, at page 1031, 134 So. (2d) 248), had happily regained his health and was decreed to be fully cured and competent in 1948 by the judgment (after a full hearing) of the Civil District (probate) Court for the Parish of Orleans, which thereupon canceled his civil interdiction. From that time (1948) and until the decree for his disbarment in 1954, defendant's active and irreproachable professional conduct and pursuits have conclusively demonstrated his present complete responsibility and restoration to normal health. It cannot now be claimed seriously or in good faith that, for the purpose of protecting the public, the defendant, who is now in every way competent and responsible, should at the present time be deprived of the right to practice his profession in the Courts of the United States.

Respectfully submitted,

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APPENDIX "A"

(Judgment herein of United States Court of Appeals, Fifth Circuit)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15,584
DELVAILLE H. THEARD,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(January 6, 1956)

Before HUTCHESON, Chief Judge, and BORAH and BROWN, Circuit Judges.

PER CURIAM: In disbarment proceedings which were had before the Supreme Court of Louisiana, appellant's name was ordered stricken from the roll of attorneys and his license to practice law in Louisiana was cancelled.[1] Thereafter, and by reason of the foregoing, the

[1] 225 La. 98, 72 So. (2d) 310, cert. den. 348 U. S. 823.

United States Attorney filed against appellant in the District Court a rule for disbarment pursuant to Rule 1 (f) of the General Rules of the United States District Court, which, in pertinent part, provides:

> "Whenever it is made to appear to the court that any member of its bar has been disbarred or suspended from practice or convicted of a felony in any other court, he shall be suspended forthwith from practice before this court and, unless upon notice, mailed to him at his last known place of residence, he shows good cause to the contrary within 10 days, there shall be entered an order of disbarment, or of suspension for such time as the court shall fix."

Upon consideration of the motion and the attached certified copy of the opinion and decree of the State Supreme Court the District Judge entered an order suspending the appellant from practice and further ordered that unless appellant show good cause to the contrary within ten days the rule would be made absolute and an order for his disbarment would be entered.

Within the period prescribed appellant filed an answer in which he advanced numerous arguments in support of his basic contention and defense that the opinion and decree of the Louisiana Supreme Court does not present any appropriate or just basis for his disbarment.

The cause came on for hearing on the motion of the U. S. Attorney and appellant's answer and after hearing arguments the District Judge ordered that the rule of disbarment be made absolute and that appellant's name be stricken from the roll of attorneys.

We are in no doubt that the order of the District Court must be affirmed. Appellant had the burden throughout these proceedings of showing good cause why he should not be disbarred. He offered no evidence and the legal contentions which he urges upon us are not persuasive.

AFFIRMED.

Rehearing refused, January 31, 1956.

APPENDIX "B"

(Judgment of the United States District Court)

JUDGMENT.

Extract from the Minutes of January 6th, 1956.

No. 15,584

DELVAILLE H. THEARD,

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

APPENDIX "C"

Cases briefed and argued by the defendant (usually as sole counsel), from May, 1948,—when his civil interdiction was removed, until April 26, 1954, when the judgment pronouncing his disbarment (225 La. 98, 72 So. (2d) 310) became final:

Doll v. Meyer, 214 La. 444, 38 So. (2d) 69, December 13, 1948;

State ex rel. Lucas v. Hickey, 214 La. 711, 38 So. (2d) 395, January 10, 1949;

Doll v. Dearie, et al., (Orleans Court of Appeal), 37 So. (2d) 61, October 18, 1948;

Doll v. Dearie, et al., (Orleans Court of Appeal), 37 So. (2d) 608, January 10, 1949;

Bonnelucq v. Bernard (Orleans Court of Appeal), 39 So. (2d) 447, April 11, 1949;

Doll v. Dearie, et al., (Orleans Court of Appeal), 39 So. (2d) 640, March 28, 1949;

Fried v. Edmiston (Orleans Court of Appeal), 40 So. (2d) 489, May 9, 1949;

Mc Daniels v. Doll (Orleans Court of Appeal), 40 So. (2d) 530, May 9, 1949;

Bonnelucq v. Bernard (Orleans Court of Appeal), 41 So. (2d) 88, October 4, 1949;

Doll v. Dearie (Orleans Court of Appeal), 41 So. (2d) 84, October 4, 1949;

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